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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,236	08/04/2003	Norman D. Hill	C02-0043-000	3770

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EXAMINER

LE, DANH C

ART UNIT PAPER NUMBER

2683

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/633,236

Applicant(s)

HILL ET AL.

Examiner

DANH C. LE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-18 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on 8/4/03 have been considered by the examiner and made of record in the application file.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillageon (US 20040052212) in view of Jiang (US 2004/0087305).**

As to claim 1, Baillageon teaches a method for automatically selecting an available data bearer for a data call initiated by a mobile station (figure 3), comprising:

- initiating a data call sequence;
- generating a session request;
- transmitting the session request to a wireless network;
- receiving a session status message from the wireless network, the session status message indicating whether the session requested was successfully established;

Baillageon fails to teach if the session requested was not successfully established, the mobile station automatically generating and transmitting a new session request, the new session request

indicating an alternate data bearer for the call. Jiang teaches that if the session requested was not successfully established, the mobile station automatically generates and transmits a new session request, the new session request indicating an alternate data bearer for the call (figure 6 and paragraphs 0088, 0089). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of Jiang into the system of Baillageon in order to direct cellular network traffic.

As to claim 2, the combination of Baillageon and Jiang teaches the method of claim 1, wherein initiating a data call sequence comprises invoking program instructions stored in a memory element in response to a trigger event (Jiang, paragraphs 0047, 0072).

As to claim 3, the combination of Baillageon and Jiang teaches the method of claim 2, wherein the trigger event is user interaction via a user interface (Jiang, paragraphs 0047, 0072).

As to claim 4, the combination of Baillageon and Jiang teaches the method of claim 2, wherein the trigger event is a scheduled data call (Baillageon, paragraph 0036).

As to claim 5, the combination of Baillageon and Jiang teaches the method of claim 1, wherein generating the session request comprises generating a data string that includes at least one of the following data elements: a call type, information identifying an initial data bearer, and information regarding data to be accessed via the voice call (Baillageon, paragraph 0020).

As to claim 6, the combination of Baillageon and Jiang teaches the method of claim 1, wherein transmitting the session request comprises sending the session request over a control channel of the wireless network (Jiang, paragraph 0094).

As to claim 7, the combination of Baillageon and Jiang teaches the method of claim 1, wherein transmitting the session request comprises sending the session request to a mobile switching center (MSC, Jiang, figure 2, 206).

As to claim 8, the combination of Baillageon and Jiang teaches the method of claim 1, the combination of Baillageon and Jiang fails to teach comprising upon receiving the session status message, displaying information indicating whether the session requested was successfully established on a display component of the mobile station. However, the Examiner takes Official Notice that displaying information indicating whether the session requested was successfully established on a display component of the mobile station is known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of recited limitation into the system of Baillageon and Jiang in order to inform the user that the session was successfully established..

As to claim 9, the combination of Baillageon and Jiang teaches the method of claim 1, further comprising if the session requested was successfully established, commencing the data call (Jiang, figure 6).

As to claim 10, the combination of Baillageon and Jiang teaches the method of claim 1, further comprising prior to generating and transmitting a new session request,

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determining whether a terminating event has occurred, and if a terminating event has occurred, canceling the data call initiated by the mobile station (Jiang, figure 6, 7).

As to claim 11, the combination of Baillageon and Jiang teaches the method of claim 10, wherein determining whether a terminating event has occurred comprises determining whether the current data call has been attempted using each data bearer in a table of data bearers at least a predetermined number of times (Jiang, 0092, 0112).

As to claim 12, the combination of Baillageon and Jiang teaches the method of claim 10, wherein determining whether a terminating event has occurred comprises determining whether a predetermined number of attempts have been made to successfully establish the session requested (Jiang, paragraph 0092, 0112).

As to claim 13, the combination of Baillageon and Jiang teaches the method of claim 10, wherein determining whether a terminating event has occurred comprises determining whether a predetermined amount of time has elapsed (paragraph 0092, 0112).

As to claim 14, the combination of Baillageon and Jiang teaches the method of claim 10, wherein determining whether a terminating event has occurred comprises determining whether external intervention has occurred (Jiang, figure 6, 7).

As to claim 15, the combination of Baillageon and Jiang teaches the method of claim 1, wherein generating and transmitting the new session request that indicates the alternate data bearer comprises accessing a table of data bearers stored in a memory component of the mobile station (Jiang, STK).

***Allowable Subject Matter***

The following is a statement of reasons for the indication of allowable subject matter:

Claims 16-18 are allowed.

As to claim 16, the teaching of above prior art alone or in combination fails to teach an application layer, comprising a memory, comprising a table for storing a list of data bearers, and program instructions, and a controller for invoking program instructions stored in the memory in response to initiation of a data call, a device layer, comprising a user interface, comprising an input device for receiving commands from a user of the mobile station an output device for communicating information regarding the status of and the session request to the user of the mobile station a transmitter for sending session requests to the wireless network and a receiver for receiving the session status message.

Dependent claims 17, 18 are allowable for the same reason.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. Stumpert et al (US 2005/0009516) teaches method for increasing the flexibility of a communication network with separated call control and bearer control.

B. Selgas et al (US 2002/0029275) teaches method and apparatus for providing fungible intercourse over a network.

C.. Urien (US 2004/0147285) teaches method for managing transmission of multimedia data via an internet-type network, in particular telephone or video data and smart card for implementing the method.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANH C. LE whose telephone number is 571-272-7868. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM TROST can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'danh', is written over a horizontal line.

July 20, 2005.

DANH CONG LE  
PATENT EXAMINER